

## **MEETING RECORD**

**NAME OF GROUP:** City Board of Zoning Appeals

**DATE, TIME AND**

**PLACE OF MEETING:** Friday, August 26, 2005, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS AND OTHERS**

**IN ATTENDANCE:**

**Members:** Gene Carroll, George Hancock, Gerry Krieser, Bob Kuzelka and Tom Wanser.

**Others:** Terry Kathe and Michele Williamson (Building & Safety), Tonya Skinner (City Law Dept.), Brian Will and Michele Abendroth (Planning Dept.), applicants and other interested parties.

**STATED PURPOSE**

**OF THE MEETING:** Regular Meeting of the City Board of Zoning Appeals

Chair Carroll called the meeting to order at 1:30 p.m.

### **Approval of the minutes of the July 29, 2005 meeting**

Wanser moved approval of the July 29, 2005 meeting minutes, seconded by Kuzelka. Motion carried 5-0. Carroll, Hancock, Krieser, Kuzelka and Wanser voting 'yes'.

**Appeal No. 05010 by Mark Hunzeker for a variance of the side yard setback on property generally located at 4030 S. 36<sup>th</sup> Street.**

## **PUBLIC HEARING**

**August 26, 2005**

Mark Hunzeker, appearing on behalf of the property owner, David D'Agostino, began by stating that Mr. D'Agostino purchased the property with the existing structure attached to it. Mr. D'Agostino was not aware that it was not in conformance with the zoning regulations, nor should there be an expectation to be aware of that fact. It is unusual for a homeowner to employ the services of an attorney prior to the purchase of a home. We do not know when the addition was built, but it was built long before Mr. D'Agostino purchased the home. Mr. D'Agostino wanted to replace the addition and was approved for a building permit. Later, it was then revoked. At the previous Board meeting on this matter, the question was raised as to whether or not this Board has the jurisdiction to approve such a variance. He assured the Board that they do. The jurisdiction relative to variances is to "vary the height, area, parking, density or sign requirements to the extent necessary to permit the owner a reasonable use of land in those specified instances where there are peculiar, exceptional, and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned." These are circumstances which are in connection with this particular parcel of land, and there is no evidence that these are circumstances generally found in this neighborhood. The legislature or City Council could have used different words to limit consideration just to conditions of the land. These circumstances are unique and justify the approval of the variance.

Hunzeker indicated that there is a petition signed by the majority of neighbors in support of the variance. The next door neighbor whose property is most affected is supporting this variance.

Hancock asked Hunzeker why he did not address the issue of the error. Hunzeker stated that the City Attorney's position is that any alleged error on the issuance of the permit was corrected by the violation notice that was sent. Therefore, there is no error to address. It is his opinion that the Board has jurisdiction for the variance.

Wanser questioned the time line of events. Hunzeker stated that they do not know when the addition was built, but it was placed on the County Assessor's record in 1993.

Carroll asked if the current owner built on to the garage. Hunzeker stated that the addition was the same footprint as the previous one. There was an extension to the parking lot, but not an extension to the building.

Carroll asked about the Board's legal authority in this case. Skinner stated that there are no provisions within the Board's legal authority based on whether or not the present owner created the problem. The Board's standard is tied to the land. One reason that there is not an exception is that it may encourage property owners to build without a permit in order to get something that they are not allowed to have by law.

Hunzeker stated that they researched the issue of a non-standard use and they do not believe it qualifies. The addition was constructed illegally. However, Mr. D'Agostino did not know that when he purchased the home in 2002. With respect to the footprint of this addition, this current addition is on the exact same footprint as the previous one.

Carroll asked if there was further testimony in favor of or against this appeal. With no one appearing further, Carroll proceeded with the Executive Session.

## **ACTION**

**August 26, 2005**

Kuzelka moved approval of the variance, seconded by Wanser.

Kuzelka stated that based upon actions by the City, he feels there are peculiar and unusual circumstances in regard to this case. Wanser stated that there needs to be a common sense approach on this because there were errors made by the City. The current owner did not make any errors.

Carroll stated that he feels there was not an error made by the City. The City tried to work with the owner to get a building permit, and once they realized there was a problem, they tried to correct the problem. He disagrees that there is an unusual, peculiar or exceptional circumstance with the land. He does not feel that they legally can approve this variance.

Motion to approve carried 3-2. Hancock, Kuzelka and Wanser voting 'yes'; Carroll and Krieser voting 'no'.

The meeting was adjourned at 2:03 p.m.